



JGJr.:12-01

Paper 6

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OFFICE OF PETITIONS

In re application of
Marchand, et al.
Application No. 09/863,904
Filed: 24 May, 2001
Attorney Docket No.: 15200-1US JA/IC

ON PETITION

This is a decision on the petition filed (with the applicable fee) on 24 September, 2001, styled as "Petition Under 37 C.F.R. §1.17(h)" (sic), and properly considered under the provisions of 37 C.F.R. §1.53 (e)¹ to accord a filing date of 24 May, 2001, to Figure 20, a copy of which was filed with the petition.

The petition is **GRANTED**.²

The record indicates that:

- the instant application was deposited on 24 May, 2001, and Figure 20 of the drawings was not included with other items of the application;
- a Notice of Missing Parts (filing date granted) was mailed by the Office on 27 July, 2001, stating that:
 - the absence of the statutory filing fee and the unsigned state of the oath or declaration constituted the missing parts; and
 - it appeared that Figure 20 was not filed contemporaneously with the application, and therefore was an omitted item;
- the instant petition was filed in response on 24 September, 2001, including therewith
 - a copy of a page Petitioner states to be Figure 20;

¹ The regulation at 37 C.F.R. §1.53(e) provide:

§ 1.53 Application number, filing date, and completion of application.

(e) Failure to meet filing date requirements.

(1) If an application deposited under paragraph (b), (c), or (d) of this section does not meet the requirements of such paragraph to be entitled to a filing date, applicant will be so notified, if a correspondence address has been provided, and given a time period within which to correct the filing error.

(2) Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(h). In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

(3) If an applicant is notified of a filing error pursuant to paragraph (e)(1) of this section, but fails to correct the filing error within the given time period or otherwise timely (§ 1.181(f)) take action pursuant to this paragraph, proceedings in the application will be considered terminated. Where proceedings in an application are terminated pursuant to this paragraph, the application may be disposed of, and any filing fees, less the handling fee set forth in § 1.21(n), will be refunded.

² Pursuant to Petitioner's instruction, the \$130.00 petition fee is credited to Deposit Account 19-5113.

--a copy of a date stamped (24 May, 2001) receipt card/page listing the contents of the submission to include, inter alia, "20 sheets of INFORMAL drawings";

Petitioner submits with the petition Petitioner's statement that the "application was filed with . . . 20 sheets of informal drawings, including Figure 20 a flow chart of the main steps of another preferred embodiment of the present invention."

Notably, a review of the record indicates that the record, absent the 24 September petition and attachments thereto, contains only 19 sheets of drawings.

Because the return postcard receipt properly itemizes the contents of the application package in accordance with MPEP §503,³ the Office concludes that 20 sheets of drawings, including Figure 20, were filed on 24 May, 2001, and that Figure 20 subsequently was misplaced by the Office.

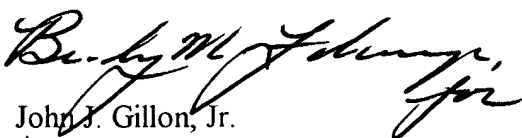
Accordingly, the petition is **granted**.

The "omitted items" section of the "Notice of Missing Parts," mailed on 24 July, 2001, is hereby withdrawn.

This application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 24 May, 2001, using:

- the 54 pages of specification and 20 claims and the 19 sheets of informal drawings filed on 24 May, 2001, and
- the Figure 20 submitted herein on 24 September, 2001, with an indication on the PALM bib data sheet that 20 sheets of drawings were present upon filing.

Telephone inquiries concerning this matter may be directed to John J. Gillon, Jr., Attorney, Office of Petitions, at (703)305-9199.



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³ MPEP § 503 provides in pertinent part as follows:

[T]he postcard receipt will not serve as *prima facie* evidence of receipt of papers which are not adequately itemized...Instead, each separate component, e.g., the number of pages of specification, number of claims (nonprovisional applications), number of sheets of drawings, cover sheet (provisional applications), etc. should be itemized on the postcard receipt...A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.